

United States District Court
Southern District of New York

UNITED STATES OF AMERICA

- against -

JUAN CARLOS HERRERA GOMEZ,

Defendant.

05 Cr. 495 (JGK)

MEMORANDUM OPINION AND
ORDER

JOHN G. KOELTL, District Judge:

The defendant moves for the return of his property pursuant to Federal Rule of Criminal Procedure 41(g). Because the criminal proceedings in the defendant's case have concluded, the defendant's motion will be treated as a civil complaint for equitable relief. See United States v. David, 131 F.3d 55, 61 (2d Cir. 1997); Rufu v. United States, 20 F.3d 63, 65 (2d Cir. 1992) (per curiam). The Court will treat the Government's response as an answer and a pre-discovery motion for summary judgment. The Government contends that most of the property sought by the defendant is subject to forfeiture. The issue is whether there are any factual disputes between the parties with respect to the property sought by the defendant. See David, 131 F.3d at 61. If the defendant disputes the Government's identification of the items seized at the time of his arrest or the Government's assertion as to which items are subject to forfeiture, the defendant should submit an opposition to the

Government's motion by August 26, 2011. The Government may then reply by September 9, 2011. If there are any issues of fact to be resolved, the Court will refer the matter to the Magistrate Judge.

If the defendant does not oppose the Government's motion, he may obtain the "miscellaneous documents that do not constitute property used in connection with the offense" by contacting the Government.

SO ORDERED.

Dated: New York, New York
July 28, 2011



John G. Koeltl
United States District Judge